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NORTHROP GRUMMAN SYSTEMS CORP.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANH BUI, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

NORTHROP GRUMMAN SYSTEMS
CORP., a Delaware Corporation, and
DOES 1-50, inclusive,

Defendants.

CASE NO. 15-CV-1397-WQH-WVG

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF DEFENDANT NORTHROP
GRUMMAN SYSTEMS CORP.'S
MOTION TO STAY PAGA CLAIMS**

Hearing:

Date: November 19, 2018
Judge: Hon. William Q. Hayes

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

**ORAL ARGUMENT REQUESTED BY
DEFENDANT**

1 Plaintiff does not dispute that the overwhelming trend among courts in the Ninth
2 Circuit has been to stay litigation of representative PAGA claims until the underlying
3 arbitration of individual claims is complete. Mot. (Dkt. 71-1) at 2:2-15. In fact, none
4 of the PAGA cases she cites even involves a court denying a motion to stay where
5 individual Labor Code claims were proceeding in arbitration. That omission is telling,
6 particularly given the Ninth Circuit’s decision in *Aviles v. Quick Pick Express, LLC*,
7 703 Fed. Appx. 631, 632 (9th Cir. 2017). There, in considering how a district court
8 should handle overlapping PAGA claims (in court) and individual claims (in
9 arbitration), the Ninth Circuit directed: “the district court should stay Aviles’s PAGA
10 claims during the pendency of the arbitration.” 703 Fed. Appx. 631, 632 (9th Cir.
11 2017). The Ninth Circuit’s reasoning was based on common-sense notions of
12 efficiency: “If the arbitration on the individual claims determines that Aviles is an
13 ‘aggrieved employee’ within the meaning of Cal. Lab. Code § 2699, then he can
14 pursue his PAGA claims in the district court.” *Id.* Conversely, if the arbitration
15 reveals that Plaintiff has suffered no harm, there are no PAGA claims for the Plaintiff
16 to pursue. That is because only an “aggrieved employee” may pursue PAGA claims
17 on behalf of other employees. Cal. Lab. Code § 2699(a); *Kim v. Reins Int’l Cal., Inc.*,
18 18 Cal. App. 5th 1052, 1055 (2017) (review granted); *Cabrera v. CVS Rx Services,*
19 *Inc.*, No. 17-05803, 2018 WL 4585678, at *2 (N.D. Cal. Sept. 25, 2018).

20 The result in *Aviles* is the very same result that was reached by the California
21 Court of Appeal in *Franco v. Arekalian Enterprises, Inc.*, 234 Cal. App. 4th 947
22 (2015). There, the Court held: “Because the issues subject to litigation under the
23 PAGA might overlap those that are subject to arbitration of Franco’s individual claims,
24 the trial court must order an appropriate stay of trial court proceedings.” *Id.* at 966.
25 Plaintiff cites no cases to the contrary—certainly no cases that would warrant a
26 departure from the Ninth Circuit’s directives in *Aviles* or the common-sense result
27 reached by the California Court of Appeal in *Franco*.

1 This is *not* a case in which Defendant is forcing Plaintiff to litigate an issue that
2 is not already at issue: her status as an aggrieved employee is *already* pending in
3 arbitration, and is squarely before the arbitrator. Given that there are two parallel
4 proceedings, the only question is whether her claims on behalf of other employees
5 throughout the State of California should be permitted to proceed before her own
6 individual arbitration is concluded. That question is squarely answered in *Aviles* and
7 *Franco*.

8 Plaintiff's remaining arguments are largely beside the point:

9 First, Plaintiff suggests that she has complied with PAGA's administrative
10 notice requirements. But that issue is not even before the Court. Defendant will
11 provide evidence regarding that issue at the appropriate time. In the meantime, it
12 suffices to say that Plaintiff is simply wrong about the arbitrator's prior rulings in this
13 case, and the effect of those prior rulings on this Court. She is also wrong to suggest
14 that Defendant is forum shopping: Defendant had requested *long ago* that the PAGA
15 claims be transferred to federal court, and it was only recently that Plaintiff agreed
16 with Defendant that the claims should be moved to this Court. Notably, she made that
17 decision only *after* the arbitrator denied her request for state-wide discovery related to
18 her PAGA claims. Under the circumstances, her accusations of forum shopping are
19 quite disingenuous.

20 Second, Plaintiff suggests that Defendant intends to asks for stays "in
21 perpetuity." That has never been Defendant's position. Defendant is eager to move
22 forward with the individual arbitration so that it can determine once and for all whether
23 Plaintiff's claims have merit. (They do not.) And yet, Plaintiff has repeatedly
24 managed to find ways to delay the resolution of her individual arbitration. For
25 example, more than a year after the arbitration was initiated, Plaintiff had still not
26 complied with her basic initial disclosure requirements under JAMS Rule 17.
27 Defendant was required to file a motion with the arbitrator to get her to do so. And
28 just this past month, Defendant was required to file a motion with the arbitrator to get

1 her to commit to a deposition date: something she had been asked to do since at least
 2 2017. The truth is, Plaintiff has very little interest in pursuing her individual claims: if
 3 she did, they would have already been resolved by now. To move this matter forward,
 4 she need only stop the foot dragging and get to resolution in the arbitration.

5 Plaintiff is also less than candid in citing to Defendant's prior stay requests in
 6 this Court. Those prior requests relate to Plaintiff's improper attempts to pursue a
 7 class action in this Court, and this Court ultimately concluded that a stay was
 8 appropriate pending a key decision from the Supreme Court. (Dkt. 62 (11/9/2017
 9 Order)). Ultimately, Defendant was vindicated in its request—Plaintiff was forced to
 10 dismiss her class action claims when the Supreme Court issued its ruling. (Dkt. 67-
 11 68). The fact that Defendant successfully pursued a prior stay of this matter is not
 12 evidence of anything more than this: it saved the parties the unnecessary litigation
 13 associated with a class action that should have never been filed to begin with. That,
 14 coincidentally, is precisely the type of efficiency that Defendant is seeking now—a
 15 request that is fully consistent with *Aviles* and *Franco*.

16 For the foregoing reasons, the Court should issue an order staying the litigation
 17 of Plaintiff's representative PAGA claims in this Court while her individual claims are
 18 pending in arbitration.

19
 20 Dated: November 12, 2018

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Jesse A. Cripps

Jesse A. Cripps

Matthew T. Sessions

Attorneys for Defendant

NORTHROP GRUMMAN SYSTEMS CORP.